



**Widener School of Law Environmental and Natural Resources Law Clinic's
Citizens' Guide
To General Stormwater Liability Issues in Pennsylvania**

SUMMARY

In Pennsylvania, the liability of one property owner to another for damages caused by storm or rainwater flowing onto the latter's land is limited. Generally, a property owner will not be liable to his or her neighbor for damages caused by stormwater flowing naturally onto the neighbor's land. However, if a property owner does something that alters the natural flow of the stormwater, he or she may be liable to the neighbor for damages resulting from the alteration of that natural flow.

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MORE DETAILED GENERAL DESCRIPTION OF THE LAW

In Pennsylvania, the common law rule for stormwater is known as the Common Enemy Doctrine.¹ The doctrine views naturally flowing water (like stormwater runoff) as the “common enemy” of all people, who must act to protect themselves from the natural consequences of that flow. While the doctrine imposes a duty to use one’s property in such a way that it does not cause injury to the property of a neighbor,² that duty is limited.

To understand how the doctrine works, imagine two property owners—Mr. A, who owns land at a higher elevation, and Mrs. B who owns the neighboring parcel at a lower elevation. Because water tends to flow downhill, we would expect stormwater falling on Mr. A’s land to flow onto Mrs. B’s land. Under the Common Enemy Doctrine, if Mr. A does not alter the natural flow of the stormwater, then Mr. A is not liable to Mrs. B even if that natural flow causes damage to Mrs. B’s property.³ However, if Mr. A alters the natural flow of stormwater—say, by digging channels or changing the elevation or slope of the land⁴ or concentrating the natural flow by artificial channels like drainage pipes or ditches—and that stormwater then discharges onto the property of Mrs. B, then Mr. A has likely violated the rule even though the amount of surface water is the same as before.⁵

Here are some examples of how the Common Enemy Doctrine has worked in the past:

1. Water flowing naturally from A’s property, accumulates in an adjacent public alleyway due to the natural slope of A’s land in relation to the alleyway. During cold weather, the alleyway is turned into a dangerous icy condition which causes pedestrians to fall. Although the alleyway was covered by A with macadam, the court held that A was not liable because the grade of property was not artificial and did not alter the natural channel or increase the quantity of water flow.⁶
2. A natural swell or channel runs across A’s property. A developed the land and installed batting cages. To do so, they filled in the natural swell with grade and fill. By doing so, A altered the natural flow of water across the land. Instead of the water collecting in the swell and moving down to a streambed, the water now floods and sheet flows across the entire property onto the property of B causing significant damage to B.

¹ *LaForm v. Bethlehem Township*, 499 A.2d 1473 (Pa. Super. 1985).

² *Balent v. City of Wilkes-Barre*, 542 Pa. 555, (1995) quoting *White's Appeal*, 287 Pa. 259, 134 A. 409 (1926).

³ *Id* at 1254.

⁴ *Leiper v. Heywood-Hall Construction Company*, 381 Pa. 317, (1955); *Ridgeway Court, Inc. v. Landon Courts, Inc.*, 295 Pa.Super. 493, (1981).

⁵ *Maiale v. Procaccino* 73 PA. D. & C. 4th 449, 455 (2005) (quoting *Tom Clark Chevrolet v. PA DEP*, 816 A.2d 1246, 1252(Pa. 2003).

⁶ *Fazio v. Fegley Oil Co., Inc.*

A is found liable for water trespass under the Common Enemy doctrine for this alteration and injury to B.⁷

3. To reduce water flowing over a road, A installed a drainage pipe under the road and onto the property of B. The pipe diverted the nature flow and concentration of stormwater that traveled from A's land to B's. The alteration and concentration of water onto B's land cause severe erosion that would otherwise not have occurred naturally. A was found liable for water trespass under the Common Enemy doctrine for this alteration and injury to B.⁸

4. A purchased a piece of land next to B. A removed an existing garage that was attached to B's home. The garage belonged to A and was on her land. A did this to build a home and a garden. After the removal, A had a retaining wall built against B's home that extended six feet below ground level. A also had the wall covered with a water sealant to prevent water leakage to B's basement. A then had the area where the garage was located, filled with topsoil and made a garden. A was found not liable for stormwater damage to B's basement. The court found that A took the necessary precautions to prevent injury to B and changed the land back to its natural state. In so doing, A did nothing to alter the natural flow of stormwater.⁹

5. A closes certain stormwater drains causing an increase in flow of stormwater to other available drains. One available drain was on B's property. Although B's property was consider "always wet" or "swampy", the increase in volume and concentration of water flow caused injury to B. A was found liable for closing existing stormwater drains and altering the natural existing flow of water to injury B.¹⁰

In addition to the Common Enemy Doctrine, Pennsylvania has passed The Storm Water Management Act which requires anyone engaged in alteration or development of land that may affect stormwater runoff to take necessary measures to prevent injury to health, safety, or property of others.¹¹ The legislation lists two standards to ensure that the development does not affect stormwater runoff in a harmful way. The individual must:

- (1) Assure that the maximum rate of stormwater runoff has not changed after development, or

⁷ *Olexa v. DeSales University*, 2005 WL 4904830, 190 (Pa.Com.Pl. 2005).

⁸ *Id at 190*.

⁹ *Maile v. Procaccino*, 2005 WL 3675330, 457 (Pa.Com.Pl. 2005).

¹⁰ *Furtek v. West Deer Tp.* 19 Pa. D. & C.2d 169, 175-76 1960 WL 8351 (1960).

¹¹ The Storm Water Management Act. 32 P.S. § 680.1_(1978).

- (2) Manage the quantity, velocity, and direction of resulting storm water runoff in a manner which adequately protects health and property from possible injury.¹²

The legislation allows civil remedies regarding violations of the act. It states that any violation of the act is declared a public nuisance and any injured person, county or municipality may file suit. Please note that who the defendant is may impact the ability of a property owner to recover for his injuries. Sovereign immunity—that is, the immunity from liability extended to governmental entities—might further limit the remedies available to the injured party if the source of the stormwater is owned by a governmental unit.

By and large, questions about whether or not a particular situation gives rise to liability under either the Common Enemy Doctrine or the Storm Water Management Act require a close analysis of the specific facts of a situation.

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¹² *Id* at § 680.15.